

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TUAN QUANG,)
Petitioner,) 8:05cv429
vs.) ORDER on INITIAL REVIEW
INS,)
Respondent.)

This matter is before the court for initial review of the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("§ 2241 petition") filed by the petitioner, Tuan Quang. The petitioner states that he is a resident alien, presently in the custody of the Nebraska Department of Correctional Services ("DCS") after conviction of a nonviolent offense.

A detainer has been lodged against the petitioner by the U.S. Immigration and Naturalization Service ("INS"). The Nebraska authorities have recently granted the petitioner parole, subject to removal of the detainer. The petitioner states that a recent federal statute allows resident aliens like him to retain their residence status even if convicted of a nonviolent offense. Thus, the detainer violates the petitioner's constitutional and federal statutory rights because he is not subject to removal or deportation.

Upon initial review of the § 2241 petition, the court concludes that the § 2241 petition need not be summarily dismissed, and a response to the petitioner's claims is appropriate.

THEREFORE, IT IS ORDERED:

1. That the Clerk of Court shall send copies of this Order and copies of the Petition for Writ of Habeas Corpus to the Attorney General of the United States, the Assistant Secretary of the United States Bureau of Immigration and Customs Enforcement, and the Secretary of the United States Department of Homeland Security, all in care of Michael G. Heavican, the United States Attorney for the District of Nebraska;
2. That upon initial review of the § 2241 petition, the court concludes that summary dismissal of the § 2241 petition is not appropriate;
3. That by October 14, 2005, the respondent(s) shall answer or otherwise respond to the § 2241 petition; and

4. That by October 31, 2005, the petitioner may reply to the response filed by the respondent(s).

DATED this 3rd day of October, 2005.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge